HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.2532 of 2007

Between:

D.Vittal ….Petitioner

And

The Debt Recovery Appellate Tribunal,
Chennai & others. …..Respondents

:: O R D E R ::

Counsel for the petitioner : Shri C. Damodar Reddy

13th February, 2007

Per G.S. Singhvi, C.J.

This petition filed for quashing the sale of Flat Nos.2F, 3B, 3C and 3D of Geervani Apartments, Malkajgiri, Ranga Reddy District by the Recovery Officer, Debts Recovery Tribunal, Hyderabad (hereinafter described as 'the Recovery Officer') to respondent Nos.5 to 8 and order dated 6-12-2006 passed by the Debts Recovery Appellate Tribunal, Chennai (for short, 'the Appellate Tribunal') in M.A.No.170 of 2006, can appropriately be termed as a desperate attempt by one of the partners of M/s.Karuna Builders (respondent No.4) to avoid the consequences of the failure of the said respondent to repay the loan taken from New Bank of India (now Punjab National Bank).

A perusal of the averments contained in the writ petition shows that respondent No.4 had availed term loan facility for construction of a residential complex in premises bearing No.13-89 comprised in Survey No.737/1 situated at Malkajgiri. For securing repayment of the loan, respondent No.4 deposited title deeds of the property. After sanction of the loan facility to respondent No.4, New Bank of India merged with Punjab National Bank. The latter filed suit (O.S.No.619 of 1992) in the Court of Additional Sub-Judge, Ranga Reddy District for recovery of Rs.5,41,450/- with interest. Vide judgment dated 28-11-1995, the trial court passed preliminary decree in favour of the bank and granted three months time to respondent No.4 for repayment of the loan amount. However, the latter did not repay the loan. Therefore, the trial court passed final decree on 29-1-1998. Notwithstanding this, respondent No.4 and its partners including the petitioner did not evince any interest in repaying the loan amount with interest. After some time, the bank filed an application under Section 31-A of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for execution of decree dated 29-1-1998. The Presiding Officer, Debts Recovery Tribunal, Hyderabad accepted the prayer of the bank and issued recovery certificate, which enabled the bank to attach the flats in question. The Recovery Officer issued sale notice and fixed the date of auction as 23-3-2005. However, auction was actually conducted on 28-3-2005. Respondent Nos.5 to 8 gave highest bids for the flats. Their bids were accepted by the Recovery Officer and the flats were transferred in their names.

After finalisation of the sale, the petitioner filed C.P.No.23 of 2005 for setting aside the auction. He pleaded that valuation got done by the Recovery Officer was on lower side and he did not get opportunity to participate in the auction because the date of auction

was changed without any notice. By an order dated 8-6-2005, the Recovery Officer dismissed the petition. The relevant extracts of that order are reproduced below:

> "It is a fact that the auction was initially scheduled to be conducted on 23-3-2005. As the Recovery Officer was on other duty on that day, the auction was postponed to 28-3-2005 under Rule 15 of Income Tax Act, 1961 and accordingly a copy of the postponement notice was also affixed on the notice board. Under Rule 15 of II Schedule of Income Tax Act, 1961, the Recovery Officer may in his discretion adjourn any sale to a specific date and hour and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment.
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> The existing reserve price as pointed out by the claim petitioner is basing on the valuation report as submitted by the authorised valuer of the applicant bank and also personal inspection made by the Recovery Officer. The reserve price was fixed taking into consideration the age of the construction of building and the Recovery Officer is competent to fix the reserve price basing on the valuation report submitted by the approved valuer under Rule 18 of Income Tax (Certificate Proceedings Rules), 1962. The rate for which the flats were sold in the public auction is more than that of reserve price fixed by the Recovery Officer."

The appeal preferred by the petitioner against the order of the Recovery Officer was dismissed by the Presiding Officer, Debts Recovery Tribunal, Hyderabad vide his order dated 10-8-2006. The learned Presiding Officer observed that the reserve price fixed by the Recovery Officer was commensurate with the price specified in the recovery certificate and there was no valid ground to interfere with the auction/sale of the flats. The learned Presiding Officer then referred to the judgment of this Court in **Kandaru Samasundaram v. B.Satyanarayana Agarwal**[1] and held that the petitioner was not

entitled to complain against the sale price.

Further appeal preferred by the petitioner was dismissed by the Appellate Tribunal with an observation that the increased price indicated in the documents produced by the petitioner cannot be taken into account for the purpose of nullifying the auction.

We have heard Sri C.Damodar Reddy, learned counsel for the petitioner, who made strenuous efforts to persuade us to nullify the auction proceedings by arguing that the Recovery Officer had changed the date of auction without notice and the reserve price of the flats had been arbitrarily fixed by the officer concerned.

In our opinion, there is no merit in the contention of the learned counsel and the writ petition is liable to be dismissed summarily. The petitioner has not explained as to why he and other partners of respondent No.4 did not repay the amount drawn from the bank in terms of the loan facility. He has also not explained as to why the amount of loan was not repaid during the pendency of O.S.No.619 of 1992 or in compliance of preliminary decree dated 28-11-1995 and final decree dated 29-1-1998 and why he and other partners of respondent No.4 maintained silence till after finalisation of the sale. All this shows that the application for setting aside the auction was filed by the petitioner with the sole object of delaying the process initiated by the bank for recovery of its dues. If the petitioner wanted to save the flats constructed by respondent No.4, then he should have participated in the proceedings of the civil suit filed by the bank or should have repaid the amount after passing of the preliminary or final decree. However, the fact of the matter is that he maintained total silence for a period of more than one decade and woke up from slumber only when he found that the flats have been transferred in favour of respondent Nos.5 to 8. In our considered view, the complaint

made by the petitioner after a time gap of more than one decade counted from the date of institution of the suit by the bank cannot but be termed as one filed with an oblique motive of frustrating the recovery of public dues and there is no valid ground to interfere with the sale of the flats on the ground that the same were not properly valued.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.3256 of 2007 filed by the petitioner for stay of the sale proceedings conducted by the Recovery Officer is also dismissed.

G.S. SINGHVI, CJ

13th February , 2007

C.V. NAGARJUNA REDDY, J

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[1] 2004 (3) ALD 442